



Missouri Department of Natural Resources

MISSOURI CLEAN WATER COMMISSION MEETING

September 19, 2001

Holiday Inn West Park Conference Center, Cape Girardeau, Missouri

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Davis E. Minton, Vice-Chairman, Missouri Clean Water Commission
Arthur E. Hegi, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Michael Bollinger, Ameren, St. Louis, Missouri
Robert Brundage, Premium Standard Farms/MoAG, Princeton, Missouri
James Burris, Department of Natural Resources, Poplar Bluff, Missouri
David Cavender, City of Rogersville, Springfield, Missouri
Randy Clarkson, Department of Natural Resources, Jefferson City, Missouri
Cindy DiStefano, Department of Conservation, Columbia, Missouri
Charles Dufour, Sycamore Springs MHC, St. Louis, Missouri
Suzanne Flanegin, Assistant Attorney General, Jefferson City, Missouri
Patricia Fribis, House Springs Sewer Company, St. Louis, Missouri
Gary Gaines, Department of Natural Resources, Poplar Bluff, Missouri
Ron Hansen, Missouri Department of Conservation, Holts Summit, Missouri
John Hill, Department of Natural Resources, Poplar Bluff, Missouri
Frederick Hutson, Department of Natural Resources, Jefferson City, Missouri
Richard J. Laux, Department of Natural Resources, Jefferson City, Missouri
Leland McMasters, City of Rogersville, Rogersville, Missouri
John Madras, Department of Natural Resources, Jefferson City, Missouri
Tim Mattingly, Department of Natural Resources, Poplar Bluff, Missouri
Ken Midkiff, Sierra Club, Columbia, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Dan Molloy, City of Williamsville, Poplar Bluff, Missouri
Deborah Neff, Assistant Attorney General, Jefferson City, Missouri
Floyd Norrick, House Springs Sewer Company, Hillsboro, Missouri
John Pozzo, Ameren, St. Louis, Missouri
Joy Reven, Department of Natural Resources, Jefferson City, Missouri
Charles Raab, City of Kansas City, Kansas City, Missouri
Debi Richardson, City of Rogersville, Springfield, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri

David Shanks, Boeing, St. Louis, Missouri
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri
Kevin Shrader, City of Williamsville, Poplar Bluff, Missouri
Terry Spence, Unionville, Missouri
Bridie Stieren, Sycamore Springs MHC, High Ridge, Missouri
Tony Stieren, Sycamore Springs MHC, High Ridge, Missouri
Scott B. Totten, Department of Natural Resources, Jefferson City, Missouri
Steve Townley, Department of Natural Resources, Jefferson City, Missouri
Diane Waidelich, Secretary, Missouri Clean Water Commission
Bob Williamson, Kansas City Water Services, Kansas City, Missouri

Chairman Herrmann called the meeting to order at approximately 9:10 a.m. and introduced Commissioners Kelly, Minton, Hegi, Perry; Engineering Section Chief, Randy Clarkson; Secretary, Diane Waidelich, and Assistant Attorney General, Deborah Neff. Commissioner Greene was not present.

Administrative Matters

Clean Water State Revolving Fund Leveraged Loan Project Bypass

Steve Townley, Chief of the Financial Services Section, reported there were considerably more applicants than available money. For the 2002 Intended Use Plan there was \$48.5 million worth of projects appearing on the Contingency List. Mr. Townley noted staff has not historically had Contingency Lists of this size. When it was prepared staff were quite concerned about projects being able to move forward and anticipated that project bypassing would become an issue as the funding cycles moved forward.

Mr. Townley reviewed language in the Intended Use Plan giving the commission authority to bypass any project on a fundable priority list that is not making satisfactory progress toward obtaining clean water State Revolving Fund assistance. This language also states that carryover projects may be automatically bypassed if all documents are not submitted and approved on or before September 8, 2001. Mr. Townley explained that carryover projects not participating in the fall financing have no further opportunities to secure a loan between now and the next spring approval of the next Intended Use Plan. The monies allocated to the carryover projects in the FY 02 Intended Use Plan cannot be used by the carryover projects. A significant financing is being proposed for this fall with 23 communities requesting approximately \$120 million.

Mr. Townley explained one of the communities is requesting an increase of approximately \$1.6 million and staff is proposing to elevate one of the Contingency List projects if the commission approves the staff recommendation. The communities of Lexington, St. Joseph, Rogersville, Farmington, Matthews, Potosi, Boone County Regional Sewer District, Festus/Crystal City, and Springfield appear on the Carryover List. They are not proceeding in a fashion that would allow

staff to close on their projects this fall. Several projects have not been successful in securing voter authorization of their bond referendums, several are no longer proceeding with the projects they had indicated in their earlier applications, several projects will reapply and anticipate financing their projects sometime next year. These projects total \$66.9 million. Staff proposed to increase one project of about \$1.6 million and elevate from the Contingency List to the Fundable List the Kansas City project of approximately \$17.415 million. The balance of the \$66.9 million will remain in the uncommitted reserve and be available for project increases between now and the November closing or be available in the FY 03 Intended Use Plan. Mr. Townley requested the commission bypass the nine communities and make those monies available in the uncommitted reserve for allocation to projects as needed.

Commissioner Perry asked if these nine communities were notified and if they were all in agreement with the staff recommendation.

Mr. Townley responded they were notified and he was not aware of any of the communities being present today. No objections to the staff proposal were received. Mr. Townley noted all of these communities have the opportunity to reapply and several have already indicated they will do so. There is no opportunity to finance these communities between now and next year when the new Intended Use Plan is brought to the commission.

Commissioner Perry asked if staff knows that these communities have received notification of the proposed bypass.

Mr. Townley replied several of them received telephone calls from staff identifying action that would be proposed today.

Commissioner Perry noted she is particularly concerned about the first two where it is indicated they have failed to work with staff.

Mr. Townley noted the projects have appeared on the last two Intended Use Plans and apparently are no longer proceeding. Staff will be encouraging the communities to submit another application but there is presently no active participation by the communities.

Chairman Herrmann asked for an explanation of the inclusion of Rogersville on the Intended Use Plan and the request by Rogersville for additional phosphorus funds.

Mr. Townley explained Rogersville appears on the Leveraged Loan Fundable list and staff is proposing to finance the project out of the state Direct Loan program. Mr. Townley noted there are a number of funding programs being made available to Rogersville.

Commissioner Hegi asked if these two communities have any violations.

Mr. Mohammadi responded there is no enforcement action against Lexington. The city of St. Joseph is working on a Combined Sewer Overflow issue.

Commissioner Minton moved to **accept the staff recommendation regarding the clean water state revolving fund leveraged loan project bypass**; seconded by Commissioner Hegi and unanimously passed.

Project Cost Adjustments

Mr. Townley reported the City of Nixa is one of the communities that will be participating in the fall closing. Since the original application was submitted in 1999, the city realized they need to increase the loan amount from the original \$5.8 million to \$7.5 million. Mr. Townley recommended allocation of \$1,628,302 to this project.

Commissioner Perry asked what precipitated the need for increased funding.

Mr. Townley responded some project cost adjustment reflects three years of inflation. The project scope has gone from a concept phase to a firm project cost estimate as the bidding phase begins. Mr. Townley stated there have been some enhancements to the core treatment plant scheme.

Commissioner Perry questioned this much of an increase for project enhancements.

Mr. Townley noted this is a very rapidly growing community with stringent water quality standards. He stated it is affordable by the community and staff feels comfortable with the increase request.

Commissioner Perry moved to **accept the staff recommendation regarding the project cost adjustment for the City of Nixa**; seconded by Commissioner Kelly and unanimously passed

Rogersville Request for Additional Phosphorus Funds

Mr. Townley reported in 1999 Congress provided the State of Missouri \$5.2 million for phosphorus improvements in the Table Rock watershed. In subsequent Intended Use Plans, staff has attempted to identify communities in that watershed and allocate monies to the communities wanting to upgrade their treatment systems to accommodate the new phosphorus requirements.

Rogersville recently opened bids on its wastewater project. The community requested a grant increase from the phosphorus funds of \$315,743. A corresponding increase to the state matching grant of \$143,519 would also occur upon approval of this request. Mr. Townley stated there were a number of bidders on this project and staff believes this is a very accurate representation of the true cost of providing the facilities to the community. About \$1.5 million will be provided to Rogersville through the Direct Loan program. The community will offer about \$1 million of general obligation bonds and about one-half million dollars of revenue bonds in order to move

forward. The Community Development Block Grant Program will also provide one-half million dollars toward completion of this project. The funds for this project will be secured from the uncommitted reserve of approximately \$750,000. Mr. Townley reported Branson West is requesting \$1 million of phosphorus funding. Since the entire amount was not available and a late application was received, staff placed Branson West on the Contingency List. About one-half of the communities in this watershed have yet to apply for phosphorus funds. The competition for these funds over the next application cycle will be very intense. Mr. Townley stated the FY 03 list of applications will be very long and a number of communities will be placed on the Contingency List. Allocating monies to Rogersville will cut short funds available through the uncommitted reserve but not awarding these funds will make the community unable to proceed. Mr. Townley noted the community is presently under enforcement action and staff has concerns about the ability to continue growth without this project. He recommended approval of this request.

Chairman Herrmann asked for information on the phosphorus removal grants that have been awarded.

Mr. Townley reported staff has provided funds to Nixa, Ozark, Cassville, Kimberling City, Seymour, Rogersville, Fordland, Exeter, Hurley, and the Stone County Sewer District. Staff has not yet been able to fund Branson West, Crane, Reeds Spring, Purdy, Sparta, Freemont Hills, Clever, Galena, and Highlandville. There are unsewered communities that may yet apply for next year's competition.

Commissioner Hegi asked how much project costs are increased by the phosphorus removal requirement.

Mr. Clarkson noted it depends on the type of treatment process. Rogersville will be adding chemicals in addition to filtering the wastewater to remove the phosphorus. In general, the cost is substantial relative to the overall project cost.

Commissioner Hegi asked how much of the phosphorus money is used to upgrade the regular sewer system and how much is used for phosphorus removal.

Mr. Townley responded eligibility is limited only to the phosphorus components within the treatment system.

Commissioner Hegi noted he has spent a lot of time over the last few weeks attending meetings relating to this issue and just became aware of how broad the problem is in Southwest Missouri. He stated if the overabundance of this phosphorus is land applied, it is just going to be washed back in the waterways when the ground is already saturated. Commissioner Hegi noted even if all the communities could be funded, it wouldn't have an effect on this situation according to information he received from the University of Missouri.

Commissioner Perry asked if a priority list was developed or if the money is awarded based on whose application is received first.

Mr. Townley replied the federal grant did not specify any type of a priority system or allocation of the funds. Letters were sent to all of the communities in the area inviting them to apply. Projects that apply in a particular year are prioritized within the Intended Use Plan. Staff has been working with communities trying to get them into the program. A number of communities were surprised by the initiative and did not have projects ready. Communities were notified that there were not sufficient funds available for all of the communities to be funded.

Chairman Herrmann asked if all of the major contributors have received funds.

Mr. Townley replied the larger communities have been funded. The City of Springfield was not eligible for assistance through this program because of population limits in the Congressional language. Mr. Townley reported a separate special infrastructure grant from Congress was awarded to Springfield to address their phosphorus limits.

Commissioner Perry asked if staff believes there will be a reauthorization of federal funding.

Mr. Townley responded staff is hopeful this will occur. He continued special infrastructure grants are provided through Congressional representatives, particularly those on the House Budget and Senate Appropriations Committees. There are no funds in this year's budget language and nothing further will be known until next summer.

David Cavender, Scott Consulting Engineers, introduced City Administrator Leland McMasters and Debbie Richardson of the Southwest Missouri Regional Council of Governments who is the grant administrator for Rogersville. He reported residents of Rogersville currently have very high water and sewer rates. After the project is completed, the sewer bills will raise, which will be financed through the general obligation bond. With bids coming in high, about \$4.50 will be added on to the user rate if phosphorus funds are not provided and the Direct Loan is increased. This can be avoided if the commission approves the request for additional phosphorus funds. Mr. Cavender noted the phosphorus costs are very significant in a treatment plant upgrade such as Rogersville's. The plant is at capacity and the community is under enforcement action.

Responding to Commissioner Hegi's questions, Mr. Cavender stated the design flow rate is about 300,000 gallons per day and the present flow rate is about 100,000 gallons per day. He noted this is a ten-year plant. Since the community is growing so fast, it was decided not to try to build a 20-year plant.

Commissioner Minton asked if Rogersville's position on the Fundable List would have changed if the proposal had come in at the increased level.

Mr. Townley responded it would not have because the amount of money in the unallocated reserve would have been reduced.

Commissioner Minton asked if staff anticipates more increases due to underestimated costs of removing the phosphorus.

Mr. Townley replied staff is looking at a moving target since applications are submitted well in advance of the design of the project. A number of things are accommodated in the early estimates but it is an estimate.

Commissioner Hegi asked if the 300,000 gallons per day is based on the population of 1,000.

Mr. Cavender responded the growth rate is well documented. The design flow is based on the growth rate through the 90s and that is how the 300,000 was arrived at. He noted they believe they are making a fairly moderate projection and it is just a ten-year growth rate.

Commissioner Hegi stated this problem is not going to be resolved until the phosphorus from the poultry industry coming into Table Rock Lake from Arkansas is taken care of.

Mr. Townley reported the range of priority points for the phosphorus communities: Cassville 112, Nixa 102, Ozark 99, Hurley 82, Kimberling City 79, Exeter 77, Rogersville 71, Fordland 68, Seymour 52, Branson West 55. All of these projects are on the Fundable List and monies have been allocated for them with the exception of Branson West who is on the Contingency List.

Commissioner Minton moved to **accept the staff recommendation regarding additional phosphorus funds for Rogersville**; seconded by Commissioner Kelly and unanimously passed.

Final Action on Missouri Department of Conservation Kansas City Discovery Center and Metro Offices Variance Request

Mr. Laux, Water Pollution Control Program Permit Section, reported the staff recommendation on this item was presented at the July commission meeting. The public notice of the commission's intention to approve the variance has been completed with no comments received. Conditions recommended by staff were: a five-year variance to correspond with the permit that will be issued, the operating permit be issued based on meeting advanced treatment levels, neither the treatment technology or the treatment system itself has yet been approved, the city has to approve the situation and not object to the issuance of a permit. Mr. Laux stated that staff has now reviewed and commented on an engineering report that has been submitted beginning the construction permitting process. Staff has received a letter from the city indicating its support of the project. Mr. Laux requested the commission take final action on the request.

Ron Hansen, Architectural Administrative Chief for the Missouri Department of Conservation, asked for the commission's support of the solar wastewater treatment system as demonstrating recovery and reuse in this facility will be a benefit to the citizens of the state. By utilizing this facility, contributing to the combined sewer overflow in Brush Creek can be eliminated. Mr. Hansen continued that the youth being able to view and utilize this educational component of this facility throughout the years will make it a tremendous asset to the Department of Conservation and Department of Natural Resources staff within the facility. Commissioner Hegi asked if any of the staff conditions are onerous to the Department of Conservation.

Mr. Hansen replied they have no problem with the conditions. He continued that they look forward to coming back in five years to demonstrate how well the facility has worked.

Responding to Commissioner Perry's question, Mr. Laux stated no permits were needed from the Department of Natural Resources because originally the discharge was to be to Kansas City. Originally nothing had been submitted to begin the construction permit process which is why that condition was added. The variance does not mean that the construction permit will be automatically issued; the normal process will be followed.

Commissioner Minton asked what will be done if this experimental process fails.

Mr. Hansen stated they are prepared to immediately take all the effluent to the city of Kansas City.

Mr. Laux noted there will still be a sewer connection to the city. This will allow flexibility when the city's system is overflowing raw sewage. The Discovery Center won't have to contribute to that but rather discharge directly to the stream with high quality treated water.

Commissioner Hegi moved to **approve the Missouri Department of Conservation Kansas City Discovery Center and Metro Offices variance request** as recommended by staff; seconded by Commissioner Kelly and unanimously passed.

Other

Chairman Herrmann introduced Gary Gaines, director of the department's Southeast Regional Office.

Mr. Gaines welcomed everyone to the Southeast Region. There are 33 staff at the Southeast Regional Office and they regulate 24 counties. Also present from the Southeast Regional Office were Tim Mattingly, Jim Burris and John Hill.

Commissioner Hegi asked for an update on the timber industry issue.

Mr. Gaines reported there is a lot of heavy timber cutting ongoing in the region creating short- and long-term problems. No good documentation exists on how severe the problems are. The department has been sampling at one site to get before and after information. The property owner changed and some of the conditions have changed. The Southeast Regional Office handles routine complaints regarding the heavy cutting and in some places, clear cutting. Mr. Gaines stated some landowners do a decent job of leaving a buffer strip and protecting water quality while others are distant landowners who want to make as much money as possible from the timber. He noted the Mill Spring chip mill is still operating at about the same capacity as when Commissioners Hegi and Greene toured the facility. The Scott County Port Authority chip mill has closed and is for sale.

City of Branson West Variance Request

The City of Branson West has filed a request for variance from certain provisions of 10 CSR 20-4.021, State Construction Grant Program. Branson West requested a variance to the provision in the rule limiting the grant amount to \$500,000 and from the provisions limiting the eligible costs to construction and construction engineering only. Mr. Laux reported this request is similar to previous requests relating to phosphorus removal. Staff findings are:

- Phosphorus is a significant problem in the Table Rock Lake Watershed. The Clean Water Commission adopted a change to the effluent regulation, 10 CSR 20-7.015, which requires phosphorus removal from facilities that discharge to the Table Rock Lake Watershed and places those facilities on a schedule to achieve compliance with that new requirement.
- The applicant is located within and discharges to the affected watershed and is eligible for the special infrastructure grant funds and project scope is eligible under 10 CSR 20-4.021(5).
- 10 CSR 20-4.021(4)(A) provides that a facility plan which analyzes all alternatives for treatment and determines the most cost effective approach to phosphorus removal is required to be approved by the DNR.
- 10 CSR 20-4.021(4)(B) provides that detailed engineering plans and specifications must be submitted and approved by the DNR prior to bidding this project.
- Payments for engineering planning and design may be provided by an allowance or invoiced as provided by 10 CSR 20-4.023(6)(A), State Forty Percent Grant Program.
- The grant amount is limited to 55% of the eligible costs under 10 CSR 20-4.021(2). The costs for planning and design are eligible under the federal statutes.
- Staff will recommend an emergency rule to administer the program if the variance is not granted.
- The facility must obtain a construction and operating permit from the department under 10 CSR 20-4.021(4)(E).
- The planning, design and construction of the facilities is expensive and failure to provide the grant funds will result in delay of the project. The estimated cost is \$1,484,000.

Staff recommendations were as follows:

- The letter, application and fee submitted be considered a petition for variance as provided by 644.061. Staff is supportive of phosphorus removal at the treatment facility of the petitioner and considers this project to be in the best interest of protecting waters of the state.
- The \$500,000 maximum grant amount be removed for the city of Branson West.
- Approval of this request include engineering planning and design cost as eligible costs for grant purposes.

Mr. Laux recommended approval of this variance request for five years.

Responding to Commissioner Minton's question, Mr. Laux stated the state rules have the \$500,000 cap. Most of these projects are considerably in excess of this amount. Raising the cap does not raise the percent but simply raises the total amount of the project. It will raise state costs but proportional to the 55%.

Chairman Herrmann noted the design population is shown as 6,170 and a design flow of 740,000 gallons per day, which equates to 120 gallons per capita per day. He asked if there is any justification for that unusually high amount.

Mr. Laux noted he believes they project some growth and there are some light commercial type establishments that use more that aren't included in the population equivalent. Members of the committee felt since they need to go through the regular process, they will look at this issue more in depth before this project will be bid. The issue now is the initial estimates are above the amount they could be eligible for and they want to include the planning costs.

Commissioner Perry noted she is concerned about removing a cap by authorizing a variance. She asked if the cap should be removed by rulemaking if all these projects are going to be above the cap.

Mr. Laux replied staff was willing to go that direction but some of these projects were ready to begin before a rulemaking could be completed. This is a limited group of projects so it was decided to proceed with the variances rather than do a rulemaking. Mr. Laux noted this is a special amount of money through Senator Bond which is why staff is going through the variance process rather than changing the rule which would have to be changed back after the limited amount of money is gone.

Chairman Herrmann asked what the status of this project is.

Mr. Laux stated staff isn't aware of the status at this time. The facility plan had not been submitted at the time the committee reviewed this request.

Mr. Townley stated some of the issues that have slowed this project down somewhat is the extent of regionalization, who's going to be contributing to the facility, and what kind of enhancements

they need to accommodate those flows. This has been better defined recently and allowed the community to go forward with the formalized facility planning process.

Chairman Herrmann noted the commission previously discussed regionalization in that area and the feasibility of transporting Branson West to Branson. At that time it appeared the communities would not be working toward this goal.

Mr. Clarkson replied the area between Branson West and Branson is probably more amenable to going to Branson. He noted that he thought not all of the flow from Branson West is in the drainage area that goes toward Branson. The plant is available for regionalization for some of the smaller facilities.

Mr. Townley noted staff is looking to Branson West for the FY 03 Intended Use Plan Fundable List. Favorable commission action will be pivotal in accessing funding through this program in parallel to the actions already taken for the other communities in this watershed.

Commissioner Hegi asked if Branson West is not asking for any more than what has already been given to the other communities.

Mr. Laux responded this is correct. Seven communities received relief from the design and construction requirements and six of the seven received relief on the cap of \$500,000.

Chairman Herrmann asked if there were any immediate needs of other communities in the watershed.

Mr. Townley responded there will be additional variance requests for relief from the \$500,000 limit and/or from the language limiting eligibility to just design and construction. Mr. Townley concluded that the communities of Seymour and Fordland will most likely request relief from the eligibility limitation.

Chairman Herrmann asked if they are any further along in planning than other communities.

Joy Reven, Financial Services Section, reported that the communities of Seymour and Fordland were approved for phosphorus funding in this year's Intended Use Plan. Both communities are fundable but have not yet requested a variance to the regulation. Branson West is on the Contingency List but has already applied for a variance although funding is not yet available.

Chairman Herrmann asked if approving Branson West's variance will affect any other community waiting for funding.

Ms. Reven responded this is a step all the communities on the Intended Use Plan have to go through and the priority order of the Intended Use Plan will be followed.

Commissioner Hegi moved to **grant preliminary approval of the Branson West variance request**; seconded by Commissioner Minton and unanimously passed.

Commissioner Perry asked if each of these cities is paying \$250 to have the commission approve a variance to a rule on a case-by-case basis.

Mr. Laux advised that each applicant for a variance must pay the \$250 fee. Mr. Laux explained that a variance fee is required by statute. While the fee was formerly \$25, it was raised to \$250 by the legislature last year as part of the fee legislation.

Sycamore Springs Mobile Home Park Variance Request

Mr. Laux reported the department received a variance application from Mr. Tony Stieren on June 15, 2001. The application requested relief from the Continuing Authority requirements of 10 CSR 20-6.010. Mr. Stieren requested that he be allowed to assume operation of the wastewater treatment system. The permit on the treatment system is currently held by the House Springs Sewer Company. Accompanying the variance application is an Application for Transfer, which Mr. Stieren completed and signed as both the current and future owner and operator of the facility. Staff investigated the request and found the following:

- The facility in question is an extended aeration plant followed by sand filtration, chlorination and dechlorination. The facility is designed to treat 36,000 gallons per day (the variance application lists the design flow as 50,000 gallons per day). The discharge is to Heads Creek a "Class C" and "losing stream" in this area.
- The permit is issued to the House Springs Sewer Company (HSSC) which is a PSC certificated private sewer company. The HSSC constitutes an acceptable continuing authority under 10 CSR 20-6.010(3)(B)3. The operating permit is expired, however, because an application for renewal has been submitted, the previous permit is administratively continued pending department action on the renewal application per 10 CSR 20-6.010(10)(E).
- The facility has a several year history of significant noncompliance with effluent limitations and reporting requirements. Notices of Violation have been issued. Recently improvements in the facility and increased efforts in operations have shown improvement in the discharges from the facility; however, staff is considering denial of the renewal application due to the extensive history of non-compliance.
- The facility serves the Sycamore Springs Mobile Home Court and a part of a nearby subdivision.
- Mr. Stieren does not appear to qualify as an acceptable continuing authority under the current rule as he does not own all property served by the facility.
- Staff is aware that there is a current dispute between the HSSC and Mr. Stieren over the ownership and operations of the facility. Mr. Stieren reports he has hired an operator and taken over operation of the facility.

Mr. Laux provided the following recommendations:

- Denying the renewal of a permit to the HSSC is appropriate given the compliance history of this facility. Staff will be assessing some additional information before any action is taken.
- The variance application should be denied due to Mr. Stieren not qualifying as an acceptable continuing authority. Without control over all property served by the facility, he is not in a position to adequately control discharges into the collection system. There is also a civil matter regarding the control of this facility that needs to be addressed in another forum. The transfer application should also be denied as the current permittee has not completed and signed the application.

Mr. Laux stated staff recently received a letter from Mr. Stieren's attorney. This letter requested the commission table this matter and direct staff to consider new information regarding the homes that have been previously connected to this facility from a nearby subdivision which apparently are now served by a different facility. Mr. Laux noted unless staff is directed to do otherwise, staff has to investigate the original request within 60 days. Staff's ability to assess changing conditions is limited to the 60 days unless the commission directs otherwise. Mr. Laux continued that the staff recommendation is to deny the request because the ownership issue needs to be addressed before staff would be in a position to reassess the issue and make another recommendation.

Chairman Herrmann asked about the status of the expired permit and the operating facility in the interim if the commission would deny the request.

Mr. Laux replied the expired permit remains in effect administratively because they have applied for the renewal. Staff has not taken a formal action to reissue or to deny and the previous limitations still apply. There were problems meeting these limitations until several months ago. There is a dispute over ownership and there is a long history of noncompliance that has changed drastically recently. The facility has been in compliance and it appears will remain in compliance.

Tony Stieren, owner of Sycamore Springs Mobile Home Park, stated he is the developer of the mobile home community and treatment facility taken over by House Springs Sewer Company years ago. He commented that there have been many incidents of noncompliance and his hands have been tied. He stated one of the improvements made to the facility was to add a sand filter. Mr. Stieren stated he feels he was forced to take over the facility due to the lack of compliance and due diligence on the part of House Springs Sewer Company. He noted he has been operating the facility for the last 90 days and brought it into compliance and wants to keep it in compliance. Mr. Stieren noted he has a Class A operator to run the facility with two on-sight community people along with himself. He stated he does not believe House Springs Sewer Company should operate the facility due to its history of noncompliance.

Skip Dufour, representing Sycamore Springs LLC, reported the Stierens seek the ability to operate this facility which now treats only the 188 pad mobile home park owned by Sycamore Springs LLC. The facilities were installed by Sycamore Springs LLC who still owns them. There is a civil law suit pending filed by House Springs Sewer Company seeking to regain control of the operations which Mr. Stieren took over in May and compel the transfer of these facilities to House Springs Sewer Company. Mr. Dufour reported House Springs Sewer Company was the permitted authority for this facility. The renewal permit application has been filed and staff has recommended denial. House Springs Sewer Company is under court order to have divested itself of its assets by December 31, 2000. This timeframe was extended to June 30, 2001 and there has been no further extension to this deadline. Mr. Dufour requested that the House Springs Sewer Company permit not be renewed based upon its past history of noncompliance and the fact that its future is in doubt. He noted Mr. Stieren is a mobile home park owner and operator by profession and will continue to be in business when it is likely House Springs Sewer Company will not. Mr. Dufour stated staff's recent finding that the facility is in compliance is in large part due to Mr. Stieren's efforts since May.

Commissioner Hegi asked what procedure Mr. Stieren used to take over the facility.

Mr. Stieren responded he locked the gates and took the facility over because everyone was tired of the odor.

Commissioner Hegi asked what type of treatment is used.

Mr. Stieren stated it is an aerated sand filter.

Mr. Dufour noted that during the staff investigation it was true that some of the lots of the subdivision were not being treated by the Sycamore Springs facility. The Lakeview Subdivision which is unrelated to Mr. Stieren had been constructing its own sewage treatment facility. The lines to those lots have been disconnected from the Sycamore Springs facility and are now being treated by the Lakeview Subdivision's facility. Mr. Dufour noted this should remove the staff's objection to Sycamore Springs not qualifying as an acceptable continuing authority. Regarding ownership and operation of these facilities, there has been a demand made for transfer of these facilities. Mr. Dufour stated they believe no such demand had ever been made before and there are many issues involved with this demand. A hearing is scheduled for Friday on a Temporary Restraining Order filed by the House Springs Sewer Company to regain control of the facilities. Final court resolution of the lawsuit issues could be a year or more away. Mr. Dufour noted they believe it is important to move forward and provide wastewater treatment to the residents of the community to avoid the longstanding problems that have occurred.

Deborah Neff, Assistant Attorney General, asked how House Springs Sewer Company became the continuing authority and began operating the wastewater facilities.

Mr. Dufour responded that this facility is within their certificated watershed, however, there was not a transfer of ownership. It is believed House Springs Sewer Company did not want ownership due to tax consequences.

Commissioner Perry noted it appears the commission is being put in the middle of a contract dispute. She asked if there has been a temporary court order saying who is to operate the facility until the suit is resolved.

Mr. Dufour responded there has not been but this may be resolved Friday during the hearing on the Temporary Restraining Order.

Commissioner Perry asked if there would not be a conflict if the Temporary Restraining Order is granted to House Springs Sewer Company.

Mr. Dufour responded he believes this is an administrative decision for the commission to make as opposed to the courts. House Springs Sewer Company has not been operating the facility correctly and it appears they will not be in business so they are asking for the variance. If it can't be granted today, possibly further staff investigation and court action would allow the commission to take action after tabling today.

Responding to Commissioner Minton's question, Mr. Laux noted permits are continued in effect automatically as long as the renewal application is received timely under the current rule.

Responding to Ms. Neff's question, Mr. Dufour provided her a copy of the Consent Judgment entered in Jefferson County Court in 1999.

Commissioner Perry asked if this consent judgment related to the ownership of the facility or the divestment of the company's assets.

Mr. Dufour responded that this lawsuit as well as a federal lawsuit was generated due to the numerous longstanding problems of House Springs Sewer Company, Imperial Utility Corporation, and the problems that Mr. Gene Fribis had with respect to federal wastewater laws that resulted in his guilty plea and subsequent incarceration. It mandates that House Springs Sewer Company divest itself of its assets. This was the lawsuit brought by the Missouri Clean Water Commission by Attorney General Jay Nixon against defendants Eugene Fribis, Imperial Utility Corporation and House Springs Sewer Company.

Commissioner Hegi asked if the Clean Water Commission ordered this case to be turned over to the Attorney General's Office.

Mr. Laux reported the lawsuit was the result of a referral to the Office of the Attorney General by the Clean Water Commission.

Commissioner Hegi noted that it is intolerable that the commission gets caught up in the court system and meanwhile pollution continues to occur for years.

Commissioner Perry asked if the staff position is changed since it appears Mr. Stieren now controls all the property.

Mr. Laux responded this was discussed within the committee and it does not change the recommendation for denial based on the uncertainty of who owns this facility. It would not be in the state's interest to recommend either of the parties without knowing who will be the owner of the facility.

Commissioner Perry asked if the fact that Mr. Stieren is currently operating the facility in compliance would have a bearing.

Mr. Laux noted the attorney for the other party will speak to the commission regarding that issue.

Mr. Dufour added that the water quality in the treatment of the facility is of paramount concern. He suggested the commission consider granting the variance conditioned upon if there is a contravening court order that finally establishes the ownership of the facilities not in the name of Sycamore Springs.

Floyd Norrick, representing House Springs Sewer Company, reported House Springs is the continuing authority under the statute and state regulation. He stated they believe the reason Mr. Stieren has applied for a variance and the permit is a matter of economics. In 1994 Mr. & Mrs. Stieren owned the mobile home park in their own name. They contracted at that time with House Springs Sewer Company to operate the wastewater treatment plant. In 1995, they conveyed that property to a company named Sycamore Springs LLC so the owner is not the Stieren's but rather Sycamore Springs LLC.

In May 2000, a new contract was entered with House Springs Sewer company upon the same terms to operate the plant. These terms specifically provide that Sycamore Springs LLC will deliver to House Springs Sewer Company the easements required for all of the facilities, title to all of the facilities, ensure that there would be no contamination from infiltration into the facilities, and grant at all times House Springs Sewer Company a right of entry so that House Springs Sewer Company could operate the facilities. At that time, House Springs Sewer Company was seeking a rate increase granted in December 2000 by the Public Service Commission. Prior to that time, House Springs Sewer Company did not have the funds to make some of the improvements that were probably needed at the plant. After the rate increase, substantial funds were spent on that plant. Mr. Norrick explained that Mr. Stieren objected to that rate increase and quit paying user fees this spring.

Mr. Norrick reported the locks were changed in June prohibiting House Springs Sewer Company from entering the premises. Mr. Stieren hired the operator that House Springs Sewer Company

had employed at that plant. Mr. Norrick stated many of the problems had already been resolved due to funds from the rate increase prior to Mr. Stieren taking over the plant. The owner was compelled to correct some deficiencies. The House Springs Sewer Company was still attempting to resolve some problems when it was locked out of the plant. It was determined at the time of the lockout that the odor problem was possibly caused by someone dumping sewage into a manhole inside of Sycamore Springs Mobile Home Park. Mr. Norrick stated the operator appears to have been working for Mr. Stieren and anticipating his taking over the plant for quite some time contributing to some of the problems that occurred. He noted that House Springs Sewer Company has received two notices of violation in the past two months because of deficiencies at that current facility while under the operation of Mr. Stieren. The department has been advised that House Springs Sewer Company cannot gain entry until a court order is issued and cannot presently correct the deficiencies. Mr. Norrick stated the fourth sand filter Mr. Stieren mentioned earlier was added prior to his taking over the facility in order to provide sewer services to a nearby subdivision and satisfy DNR requirements. Mr. Norrick asked that the commission deny the application for variance and allow the court to address the question of who has the right of ownership and operation under the existing permits.

Responding to Commissioner Perry's questions, Mr. Norrick stated Eagleview is the subdivision that caused the construction of the fourth sand filter. He indicated House Springs Sewer Company does not know if the subdivision has been precluded from use of the plant.

Ms. Neff asked if Mr. Fribis has any interest whatsoever over House Springs Sewer Company.

Mr. Norrick responded that Mr. Fribis is no longer an officer and if he has an interest it must be that of a shareholder. House Springs Sewer Company was subject to litigation in St. Louis County and the court placed Imperial Utility Corporation as well as House Springs Sewer Company in a receivership and removed Mr. Fribis as the operating officer of those companies and installed his ex-wife to operate the companies.

Ms. Neff asked if Mr. Norrick is aware if Mr. Fribis has any shares in the companies.

Mr. Norrick responded that he believes the shares are owned by another company but does not have the full background on the issue.

Commissioner Minton asked if the easements and deeds discussed earlier have been recorded.

Mr. Norrick stated they have not been. A contract was entered that required Sycamore Springs LLC to grant to House Springs Sewer Company easements and to deliver title to the facilities.

Commissioner Minton asked if that contract is in dispute.

Mr. Norrick responded there have not been enough pleadings in the other case yet to know that. The contract and obligation exist and the obligation has not yet been satisfied.

Commissioner Minton asked if the contact was signed and if the court would be ruling on who owns the plant.

Mr. Norrick stated the court will ultimately decide that.

Responding to Commissioner Perry's question, Mr. Norrick stated Friday's hearing is to ask the court to enter a temporary restraining order that will restrain the Stieren's and Sycamore Springs and Mr. McKenna from prohibiting House Springs Sewer Company from entering and operating the plant.

Commissioner Perry asked if House Springs Sewer Company is prepared to operate the facility.

Mr. Norrick indicated they have other operators who are prepared to immediately operate the plant.

Commissioner Perry asked if the difference between tabling this matter or denying the request is the party will have to file another variance application and \$250 fee.

Ms. Neff replied this is correct. If this request is denied, Mr. Stieren will have to pay another \$250 if he wants to request another variance.

Commissioner Hegi asked if the commission can waive the fee.

Ms. Neff responded the commission has the authority to grant a variance from any of its rules but a variance would have to be granted to the \$250 fee.

Chairman Herrmann stated he believes the commission cannot make a decision until the court has made a decision. He asked if there is an active operating permit for the facility.

Mr. Laux responded the matter is referred to the enforcement staff where options are assessed if staff determines there has been significant noncompliance. Permit denial is an option where the facility can get back into compliance and eventually be permitted again.

Chairman Herrmann noted if the commission tables or denies the request, there is still an operating permit that requires compliance.

Mr. Laux replied that is correct. A permit denial will not be a speedy process. The permit remains in place until a formal action is taken. Mr. Laux stated there are legal issues that need to be addressed and perhaps the situation needs to be reviewed further.

Commissioner Hegi asked if there is any idea of when the judge will rule after Friday's hearing.

Mr. Norrick responded the judge could enter an order Friday but he may address it at a later time.

Chairman Herrmann noted if the matter was tabled until the November 28 meeting, staff could do some additional investigation and some of the legal questions could possibly be resolved. The legal status of the facility will be the determining factor.

Mr. Laux noted the committee will reconvene and review issues to decide if the staff recommendation will be changed.

Commissioner Kelly moved to **table the decision on the Sycamore Springs Mobile Home Park variance request until updated information is provided at the November 28 commission meeting**; seconded by Commissioner Minton and unanimously passed.

Commissioner Kelly moved to **go into closed session** at approximately 11:35 a.m. to discuss legal, confidential, or privileged matters under section 610.021(1), RSMo; personnel actions under Section 610.021(3), RSMo; personnel records or applications under Section 610.021(13), RSMo or records under Section 610.021(14), RSMo which are otherwise protected from disclosure by law; seconded by Commissioner Minton and unanimously passed.

Commissioner Hegi moved to **return to open session** at approximately 1:40 p.m.; seconded by Commissioner Minton and unanimously passed.

Commission Action on Matters to be Referred to the Office of the Attorney General

Snow Hill Meadows Trailer Park

Kevin Mohammadi, Chief of the Water Pollution Control Program Enforcement Section, reported Snow Hill Meadows Trailer Park in Lincoln County is a mobile home park of approximately 25 trailers. The current wastewater treatment facility consists of a septic tank and sand filter and the receiving stream is tributary to Bailey Branch which is unclassified.

An Abatement Order was issued to Snow Hill Meadows on April 1, 1996 requiring construction of a new wastewater treatment facility and eliminating the unpermitted and poorly maintained lagoon. A department inspection in October 1996 revealed that the lagoon was still being operated and was overflowing and eroding its berm. An offer to settle was sent to the owner in April 1997 for not adhering to the terms of the Abatement Order. Staff opted to allow the owner to complete the construction rather than paying a penalty. The owner failed to apply for a Missouri State Operating Permit upon completion of construction.

In October 1997 the Saint Louis Regional Office issued Snow Hill a Notice of Violation for not applying for a permit and for cutting the berms of the old lagoon to allow discharge of the remaining wastewater. In March 1998 Snow Hill was issued a Notice of Violation for bypassing the new sand filter and operating without a permit. A letter from staff in December 1998 requested as-built plans, pumping of the septic tank, and submittal of a permit application and

associated fee. In March 2000 the facility was issued a second Notice of Violation for discharging without a permit and construction without a permit. An operational assessment report was also requested due to the hydraulic overload of the treatment facility. In February 2001 Snow Hill was issued a third Notice of Violation for discharging without a permit and causing pollution. In April 2001 another offer to settle was made to the owner extending the opportunity to resolve violations of the Missouri Clean Water Law at Snow Hill treatment facility. Some improvements were made and dialogue with the St. Louis Regional Office continued, however, no counteroffer to the proposed penalty was received. Additional letters offering the opportunity for a settlement were sent in June and July, 2001 with no response received.

Mr. Mohammadi requested referral of the matter to the Office of the Attorney General.

No one was present representing Snow Hill Meadows Trailer Park.

Commissioner Perry asked why it took so long to refer the matter to the Attorney General's Office.

Mr. Mohammadi replied that staff work with the entities to get them into compliance and they exhaust all efforts before a referral is made.

Commissioner Perry noted it appears staff had no cooperation for five years.

Commissioner Hegi asked if staff is sending the letters about the commission taking action on referrals return receipt requested.

Mr. Mohammadi responded that all the notifications are sent certified mail. In this particular case, staff was contacted regarding settlement but nothing was received prior to the meeting.

Commissioner Minton moved to **refer Snow Hill Meadows Trailer Park to the Office of the Attorney General for appropriate legal action**; seconded by Commissioner Kelly and unanimously passed.

Cedar Vale Mobile Home Park

The Cedar Vale Mobile Home Park is a small mobile home park located in Franklin County. Mr. Mohammadi reported the wastewater treatment facility for Cedar Vale is a two-cell facultative lagoon with a population equivalent of 42 and a design flow of 4200 gpd.

Since June 2000, Cedar Vale has been issued three Notices of Violation for operating without a Missouri State Operating Permit and failure to submit discharge monitoring reports. Discharge monitoring reports have not been submitted since December 1999, and were intermittent in the four years prior to that. Cedar Vale's Missouri State Operating Permit expired in April 1998 and

the department has received no application for renewal. Due to the lack of response, the St. Louis Regional Office referred the matter to the Water Pollution Control Program on May 7, 2001.

Cedar Vale Mobile Home Park is owned and operated by Preston Wittenborn. In addition to Cedar Vale, Mr. Wittenborn owns Oak Grove and Harper Valley mobile home parks. Oak Grove and Harper Valley have previously been referred to the Water Pollution Control Program for enforcement action and due to the continued lack of response have been referred to the Office of the Attorney General for further legal action. On February 28, 2000, a Franklin County judge issued a Final Default Order to Mr. Wittenborn in the Harper Valley case. The Order included a penalty of \$10,000 and upgrading the wastewater treatment facility, however, none of the conditions of the Order have been satisfied to date. Mr. Wittenborn has recently been arrested on an unrelated matter.

Mr. Mohammadi recommended the matter be referred to the Office of the Attorney General for appropriate legal action.

No one was present representing Cedar Vale Mobile Home Park

Commissioner Minton moved to **refer Cedar Vale Mobile Home Park to the Office of the Attorney General for appropriate legal action**; seconded by Commissioner Hegi and unanimously passed.

Commissioner Perry asked if consolidation of these matters is a decision that the Attorney General's Office will make.

Ms. Neff stated she will inform her office that the commission is interested in expediting and consolidating these matters.

Cedar Resort

Mr. Mohammadi reported the Cedar Resort is a 13 room motel located in Stone County. The wastewater treatment facility serving Cedar Resort is an extended aeration treatment plant with chlorine disinfection which serves a population equivalent of 34 and a design flow of 2000 gallons per day. The receiving stream for the treated wastewater is the Jake Creek Arm of Table Rock Lake, a major reservoir.

Since 1996, the Southwest Regional Office has issued six Notices of Violation to Cedar Resort for exceeding effluent limits contained in the Missouri State Operating Permit for biological oxygen demand, total suspended solids and fecal coliform; causing pollution of waters of the state; failing to submit timely discharge monitoring reports; and failure to properly operate and maintain the wastewater treatment facility. The most recent NOV was issued in September 2000.

The Water Pollution Control Program Enforcement Section has sent five letters offering an out-of-court settlement to Cedar Resort to resolve violations of the Missouri Clean Water Law. The owners have recently begun to bring this facility into compliance by upgrading it. However, they have refused to negotiate the civil penalty.

Mr. Mohammadi recommended the matter be referred to the Office of the Attorney General for appropriate legal action.

No one was present representing Cedar Resort.

Commissioner Kelly moved **to refer Cedar Resort to the Office of the Attorney General for appropriate legal action**; seconded by Commissioner Perry and unanimously passed.

Golden Glade Subdivision

Mr. Mohammadi stated this subdivision consists of two platted phases. The first phase consists of 13 lots platted in January of 1998 and the second phase consists of 8 lots platted in March 2001. Sewer service to the first phase of this subdivision is provided by wastewater holding tanks, which have been connected without authorization to the collection system for the Osage Water Company KK Treatment Plant. Gregory Williams is the developer of Golden Glade Subdivision, the President, Chairman, and Secretary of the Homeowner Association, and he was the President of Osage Water Company until January 2001. Mr. Williams' current affiliation with Osage Water Company is as Secretary of the corporation. In his duties as developer of Golden Glade Subdivision, Mr. Williams is supposed to pump and haul from the holding tanks to prevent them from overflowing. The tanks are also not supposed to be hooked to the treatment plant until such time as the treatment plant is expanded to serve Golden Glade Subdivision. At this time, the Osage Water Company KK Treatment Plant is only permitted to serve 25 lots in the Eagle Woods Subdivision phases I and II.

In April 2001, an inspection by department staff was performed at the Golden Glade Subdivision. Upon inspection of the holding tanks, staff observed that one tank had wastewater up to the overflow pipe and another tank was overflowing wastewater into the collection system for the Osage Water Company KK Treatment Plant. Since Osage Water Company was never issued a permit for a sewer extension and the treatment plant was not permitted to accept flow from the Golden Glade Subdivision, the developer was issued a Notice of Violation in May 2001 for operation of an unauthorized sewer extension. Osage Water Company has been issued a construction permit to expand the Osage Water Company KK Treatment Plant to serve phase I and II of the Golden Glade Subdivision, however, at this time the construction is not complete. Furthermore, Mr. Williams is offering for sale and has sold at least one lot in Golden Glade Phase II without having an approved wastewater treatment plant in place.

Mr. Mohammadi reported as of this time, Mr. Williams has made no attempt to respond to the Water Pollution Control Program's efforts to resolve this matter through an out-of-court

settlement. Mr. Williams has had extensive contact with the department on regulations concerning wastewater and was made fully aware in September 2000 through a Notice of Violation that the holding tanks serving the Golden Glade Subdivision could not be hooked to the Osage Water Company KK Treatment Plant.

Mr. Mohammadi requested a referral of this matter to the Office of the Attorney General for litigation.

No one was present representing Golden Glade Subdivision.

Commissioner Hegi asked if water treatment has to be in place when you offer a lot for sale.

Mr. Mohammadi responded the facility plan, engineering report, and plans and specifications have to be submitted and a construction permit has to be obtained prior to sale of a lot.

Commissioner Hegi moved to **refer Golden Glade Subdivision to the Office of the Attorney General for appropriate legal action**; seconded by Commissioner Kelly and unanimously passed.

Action on July 18, 2001 Meeting Minutes

Commissioner Hegi asked that the spelling of dye be changed to die in two locations on page 14.

Commissioner Perry moved to **approve the minutes as corrected by Commissioner Hegi**; seconded by Commissioner Hegi and passed with Commissioner Minton abstaining.

Briefing on Proposed Rules for Aboveground Storage Tanks

Fred Hutson, Chief of the Remediation Unit in the Tanks Section of the Hazardous Waste Program, informed the commission he oversees cleanup of petroleum releases from underground storage tanks. Rulemaking concerning cleanup requirements for aboveground storage tanks will be heard by the Clean Water Commission at its November meeting. Mr. Hutson noted the department proposed aboveground tank rules in 1997 at which time much controversy developed. The department let this proposed rulemaking lapse due to the numerous comments received at the public hearing.

The Missouri Department of Agriculture has since promulgated similar rules concerning prevention requirements for aboveground storage tanks at gas stations, bulk plants and marinas.

Chairman Herrmann asked if the Department of Agriculture excluded the individual storage tanks on farms from their rules.

Mr. Hutson responded the Department of Agriculture focuses on tanks that are being used for the resale business such as wholesale bulk plants, retail outlets, marinas and some small airports. The Department of Natural Resources rules will cover that same universe which is eligible to participate in the state's Petroleum Storage Tank Insurance Fund. These rules will not apply to farm tanks or end user tanks.

Chairman Herrmann asked how the Department of Agriculture has an interest in these tanks if farm tanks are excluded.

Mr. Hutson responded their involvement relates to the Division of Weights and Measures.

Mr. Hutson stated the Department of Agriculture rules have spill prevention requirements for aboveground tanks they regulate. The Department of Natural Resources is now developing a cleanup rule that will focus on releases to the environment.

Chairman Herrmann asked why the Clean Water Commission is still involved with aboveground tanks if the Leaking Underground Storage Tank regulations have been transferred to the Hazardous Waste Program.

Mr. Hutson replied staff who developed the law and regulations relating to tanks were originally located in the Water Pollution Control Program. This group was moved into the Hazardous Waste Program in 1995. Mr. Hutson clarified that the Clean Water Commission still has administrative authorities for rule promulgation and enforcement procedures. Mr. Hutson stated he believes the Hazardous Waste Program is considering a legislative concept recommending moving this authority to the Hazardous Waste Commission.

Commissioner Perry asked if appeals from violations of these rules are brought before the Hazardous Waste Commission.

Mr. Hutson responded they are not.

Commissioner Perry asked what the Hazardous Waste Commission has jurisdiction over.

Scott Totten, Interim Director of Staff, replied they administer the staff of the Hazardous Waste Program and the Clean Water Commission is still responsible for rulemaking.

Mr. Hutson noted while there is specific law in Chapter 319 addressing specific requirements for underground storage tanks, the primary authority for developing the aboveground tank rulemaking rests with the Clean Water Commission's general authority concerning prevention of pollution of waters of the state.

Chairman Herrmann asked if the commission requires secondary containment around aboveground tanks.

Mr. Hutson replied this comes to aboveground tank owners either from the Department of Agriculture or for other tanks exceeding a certain minimum size through the USEPA.

Commissioner Minton asked for a further explanation of secondary containment requirements.

Mr. Hutson replied the Department of Agriculture does not regulate this but USEPA requires secondary containment for any aboveground tanks storing oils that exceed 660 gallons minimum or any facility with an aggregate storage of 1,320 gallons. Mr. Hutson explained that if a farmer has a 2,000 gallon diesel tank on his land, he is not subject to Department of Agriculture Weights and Measures inspections or requirements but is subject to USEPA requirements. The Hazardous Waste Program proposal will only deal with those tanks which the Department of Agriculture is applying their jurisdiction to and which also have eligibility for funds from the state's Petroleum Storage Tank Insurance Fund. Mr. Hutson reported the Petroleum Storage Tank Insurance Fund is generally in favor of this proposed rulemaking because it will provide an organized and codified framework for addressing releases from aboveground storage tanks. The rule being developed will apply the identical process that is done today when an underground tank releases.

Chairman Herrmann noted SPCC has requirements for other chemical compounds that might be injurious to groundwater or surface waters. He asked if this will not be covered in this proposed rulemaking.

Mr. Hutson responded this rulemaking will deal essentially with motor fuel tanks that store motor fuel for resale.

Chairman Herrmann asked if the SPCC requirements will still control the local retailers.

Mr. Hutson replied it overlaps all the tanks and is administered by the USEPA. The state does not implement SPCC requirements.

Randy Clarkson, Engineering Section Chief, noted that the Clean Water Commission does have a secondary containment rule under Chapter 8 that addresses agrichemical facilities.

Responding to Chairman Herrmann's question, Mr. Hutson stated aboveground tanks are already eligible to participate in the Petroleum Storage Tank Insurance Fund along with certain former aboveground tank sites meeting certain criteria for cleanup benefits. Mr. Hutson stated the Clean Water Commission's rules concerning the operation of the Petroleum Storage Tank Insurance Fund were vacated because the Board of Trustees promulgated their own set of participation rules. This includes rules for aboveground tanks.

Mr. Hutson informed the commission the rulemaking that will be coming before the Clean Water Commission in November was developed through a much more open process than the original proposal. This rulemaking is limited in scope to cleanup of releases. Adjustments were made to

the proposal after review by the Petroleum Storage Tank Insurance Fund Advisory Committee. The revised proposal was taken back to the Advisory Committee explaining the manner in which their comments were handled. The proposal has also been discussed with members of the Missouri Petroleum Marketers Association. Mr. Hutson noted he expects some comment on the proposal but nothing similar to what was received on the original proposal. He continued that he believes the industry as a whole and the Insurance Fund overall are supportive of the rulemaking.

Commissioner Perry asked if underground storage tanks do not need a letter of approval once the site is cleaned up.

Mr. Hutson replied the underground storage tank rule does not require that the department issue a no further action letter when a site has been cleaned up to department standards, but it is department practice to do so.

Commissioner Perry asked if it is anticipated to be administrative practice to do this as well in aboveground storage tanks.

Mr. Hutson responded this will also be done for aboveground tanks.

Responding to Commissioner Perry's question, Mr. Hutson explained this rulemaking will entail definitions, applicability, some release reporting and initial abatement measures, and site characterization and corrective action.

Commissioner Perry asked if there is an inspection process prior to releases occurring.

Mr. Hutson responded the Department of Agriculture handles inspections for their requirements.

Commissioner Perry asked if there is any permitting process.

Mr. Hutson replied there is no plan to issue permits for the operation of the tanks.

Commissioner Hegi asked if it is feasible to ask the Department of Agriculture to provide information that is needed.

Mr. Hutson stated if a spill of over 50 gallons occurs, the Department of Natural Resources is to be notified. He noted there are certain permits for certain cleanup technologies. Staff works closely with the Water Pollution Control Program permit staff.

Commissioner Perry stated there is an imbalance in how the potential for contamination to the environment in terms of petroleum compares to storage of hog manure. It appears Class IAs are more heavily regulated.

Mr. Hutson responded in 1997 it was proposed that everything from construction to final closure and cleanup of any releases would be regulated. The Department of Agriculture has made their preventative requirements dealing with installation, operation, and closure more stringent. Preventing the release will be the Department of Agriculture's job.

Commissioner Perry noted possibly this should be used as an example for some of the Nonpoint Source Pollution.

Briefing on Proposed Groundwater Rule

John Madras, Planning Section Chief, reported the need for this rule was provided at the March meeting. The proposed rulemaking has not yet been filed and discussions on a number of issues between the department and stakeholders continue.

The draft rule now includes a groundwater management zone concept where a larger geographic area than a single parcel of property could be called a zone that would be subject to characterization and standards set for groundwater remediation within that larger area. Mr. Madras stated a major remaining concern is how well does the extent of contamination need to be defined geologically. The other remaining question is how much legal notification should be left in place once a cleanup has occurred, or no cleanup has occurred, and the residual contamination is allowed to remain in place. The department has been conservative in their approach but when contamination is left in place, future property owners need to be made aware of this so they won't be using the site for something it is not appropriate for. Other questions deal with how well the site needs to be characterized.

Supplemental Documentation for the Elk River/Shoal Creek 319 Application

Becky Shannon, Water Pollution Control Program Planning Section, reported the Missouri Nonpoint Source Management Program directs federal funding to projects that will address nonpoint source water pollution in the state. This year a specific geographic area was identified to target some of this funding. The area targeted in the February 2001 Request for Proposals was the Elk River and Shoal Creek watersheds in Southwest Missouri. The commission questioned two of the projects at the last meeting. Ms. Shannon noted the commission has been provided information responding to the questions along with staff and the project applicants meeting with commissioners Hegi and Perry. She requested the commission approve the projects after which they will be presented to EPA for approval.

Commissioner Minton noted he was not present at the last meeting and has a need for additional information. He asked if these facilities are owned by the individual landowners or under contract to the poultry industry.

Ms. Shannon replied staff did not distinguish between owners or contractors and that might vary. She stated the facilities in the area she is familiar with are for the most part farmer owned but the poultry may be under contract.

Commissioner Minton asked if there is a possibility that some corporation would own some of the facilities.

Ms. Shannon responded she did not believe they do.

Commissioner Hegi noted he does not know of any instances where corporations own the facilities.

Commissioner Minton stated in his area there are a lot of these facilities on individual farms but a corporation owns the facilities. He questioned if storage facilities would be built for a major corporation to house their manure.

Ms. Shannon replied the application does not specifically address this. The applicant would have to be eligible for cost share and she did not believe the ability exists to cost-share to a corporation. The cost-share would be with the landowner and they would have to show the expenditure of the funding.

Commissioner Minton asked if this community brings in all their food materials for the chickens.

Ms. Shannon noted they do for the most part.

Commissioner Minton stated this industry would be perpetuated by attempting to remove the litter outside of the community at the expense of the taxpayer.

Ms. Shannon replied the transport of the litter is a demonstration and staff hopes it will become an economically viable option to transport the litter out of the community.

Responding to Commissioner Minton's question, Ms. Shannon replied some of the litter is being sold in this community.

Commissioner Minton noted 24 facilities are proposed to be built, which he thought is a lot for a demonstration project. He asked if this will be a viable industry when the money runs out or if the entire project will fold when funding is no longer available.

Ms. Shannon responded 319 funds were traditionally used for demonstration but now EPA requires that a certain percentage of funding be used to look at restoration of the watershed. The current projects focus more on implementation than they did previously. The transportation of litter is a demonstration project to show the economic viability of doing that. The sustainability of the project is a real concern. There is a group working in the area now to address this issue.

Ms. Shannon noted several legislators are trying to address the issue of excess phosphorus in the area. A series of meetings has been held to find the most practical, economical, and sustainable way to address the issue of litter in that region.

Commissioner Minton noted there is a lot of support from the entities that are in the business of raising chickens but he did not see the fertilizer alliance supporting this project. He said he has a problem paying the chicken industry to compete directly against an MFA facility that is trying to sell dry bulk fertilizer to the same customers.

Ms. Shannon replied this project does not address that issue but she believes discussion has occurred with MFA about them being an active partner.

Commissioner Minton asked what MFA's reaction was to supporting one industry over another.

Ms. Shannon responded she has not had any input from MFA.

Commissioner Minton stated he wants to support nonpoint source projects as much as he can but he has a responsibility to other constituents also. He noted he sees this as a tremendous conflict between what will be done for one industry versus what will be done to another industry. The need to purchase commercial dry bulk fertilizer could be completely eliminated. He continued that this is a viable industry in the Bootheel and he cannot imagine that they have not figured out where to store and how to handle the litter. Commissioner Minton stated he has no problem with funding the soil sampling and demonstrating to farmers that there are alternative mechanisms and uses for fertilizer but he does have a problem with spending 2.2 million dollars for an industry that should be self-sustaining. He noted that the farmers growing for the corporations are probably not getting wealthy over this.

Commissioner Perry noted that they have loaded the farmers with the environmental problems.

Commissioner Minton added that the environmental problems have now become the state's problems and it is a travesty. He stated he believes the industry has demonstrated a complete lack of responsibility in not having addressed these issues. Commissioner Minton continued that to expect the taxpayers to clean up the mess they knew would develop is an injustice to the community and to the taxpayers. He stated he would support everything up to supporting one industry and potentially put another out of business.

Commissioner Perry asked if storage was an incentive to get farmer participation.

Ms. Shannon replied all of the incentives are to achieve farmer participation but it's storage for them to be able to use at the appropriate time on their own farms or to truck to another farm that is able to use it.

Commissioner Minton asked what is presently being done with the litter.

Mr. Clarkson stated the big advantage of storage is that the material can be applied at a time that's appropriate. Litter is now land applied when the producer needs to clean out a building. The phosphorus can be kept where it's needed instead of running off if they don't have to land apply at the time the producer needs to clean his buildings.

Commissioner Minton stated litter is stockpiled all over the Bootheel and he assumes there are times that a building is cleaned out that it has to be stockpiled because it can't be land applied. He asked if it is presently stockpiled in the open.

Ms. Shannon responded that she does not know how it's handled.

Commissioner Minton questioned what is leaching out of the litter to justify spending the money it will take to build a storage shed.

Commissioner Perry stated she believes there is a big difference between Southwest and Southeast Missouri because of the difference in the land. There is an environmental concern that is not getting any better.

Commissioner Minton stated he will support this project but he believes as these projects come before the commission they need to be very careful in the amount of money that is appropriated. He indicated he believes a scaled-down version of this could have been done thereby having money to address more projects. Commissioner Minton indicated the commission may need to put a cap on the project amounts if that's possible. He continued that when the project is so large that three new staff have to be hired there is a need to be cautious.

Ms. Shannon reported the funding from the 319 funding is \$1.3 million. The other funds shown as match are actually existing state funding that goes to the Soil and Water District.

Commissioner Minton asked if cost-share is involved in this project.

Ms. Shannon indicated there is cost-share. She continued this is the largest project staff has ever funded through 319. Ms. Shannon noted staff wanted to focus on this watershed because of the significant needs to address phosphorus. There have been three very successful 319 demonstration projects in the area that this will compliment. A project by University Extension to do the educational component of this project was approved by the commission at the last meeting. There are also private sector activities going on to address this particular issue. Ms. Shannon stated the likelihood of success is good. After EPA approves the project staff works with the applicant on the details of the project. If there are particular concerns, staff can address those during this process.

Commissioner Minton noted his major concern is the conflict of interest issue. He stated he would feel more comfortable with the project if the MFAs or the private commercial applicators are cooperating with this.

Commissioner Perry stated her point has always been if you don't monitor up-front you won't be able to gauge improvement at the completion which is what is needed here. She noted this is a very good attempt to improve on the original project proposal and she hopes it will be even better at the end of the project. Commissioner Perry noted it would be good to have a presentation on the problem in that area. She asked that the commission be given a status report of projects as they are completed.

Commissioner Hegi stated the large companies have no interest in this fertilizer. He noted the biggest part of the poultry industry in Southwest Missouri is in the Oklahoma watershed.

Commissioner Minton agreed with Commissioner Perry about the need to be able to quantify the improvements being made on nonpoint source pollution and the only way to do this is with monitoring and testing.

Commissioner Perry moved to **approve the Elk River/Shoal Creek Water Quality Restoration and Elk River Watershed Poultry Manure Composting Projects** as amended; seconded by Commissioner Hegi and unanimously passed.

Annual Progress Report on TMDL Memorandum of Understanding Between the Environmental Protection Agency and the Missouri Department of Natural Resources

Mr. Madras reported on the status through the end of June 2001 of the TMDL Memorandum of Understanding between the two agencies. The TMDL process is on track with the commitments made in the Memorandum of Understanding and those parallel the requirements that EPA is facing under a settlement agreement in federal court. There are some changes between the Memorandum of Understanding and the actual performance because staff was not able to complete some of the monitoring and analysis during the time it was planned mostly due to weather.

Mr. Madras continued that the commission was presented a draft of the Continuing Planning Process at the last commission meeting. The department committed to complete an update of that this calendar year. The public notice for that document has ended with a few comments received. A revised document will be brought back to the commission at its November meeting.

Appeals are pending in both the federal and state lawsuits related to this topic. Mr. Madras noted there may be additional changes to how the TMDL program is handled as those issues are worked out.

Staff is continuing with preparing the next Impaired Waters List. A series of five meetings were held across the state. A hearing was scheduled for last Tuesday but was postponed due to the terrorist activities occurring on that date. The commission will be advised of the reschedule date. The comment period will be extended past the hearing date.

Mr. Madras noted the commission was provided additional information related to changing EPA guidance. The rule that is in place is EPA's former rule. EPA has put the new rule on hold while the administration rethinks this proposal. EPA has offered draft guidance on their current thinking as to how 303(d) lists as well as the water quality report should be prepared. Staff will attempt to develop a list that matches whichever rule or guidance that is in effect at the time the list is sent through the commission.

Final Action on Williamsville Variance Request

Mr. Laux reported staff made the initial recommendation for approval to the commission on this request at the May meeting. Staff recommended a schedule of nine months to have all documents approved and one year from the date of variance approval to complete construction.

Mr. Clarkson noted a time limit does need to be established as part of the variance. The depth of the sludge in the existing lagoon needs to be looked at to see if there is some way to incorporate that into the project or have the 25-year old lagoon cleaned out at some time in the future.

Chairman Herrmann stated the city's engineer is agreeable to approaching the city regarding removal and disposal of the sludge to get the lagoon in an operable condition. The engineer will be maintaining contact with the staff to address Chairman Herrmann's concerns.

Commissioner Hegi asked how a determination is made on when the sludge needs to be hauled out.

Chairman Herrmann replied the engineer conducted some tests which revealed differing levels of sludge and/or silt.

Commissioner Perry asked if city sludge has more problems with a concentration of heavy metals than you would expect to find in animal waste.

Mr. Laux responded bedroom communities typically don't have many metals issues. Towns with light industry are likely to see this.

Commissioner Minton moved **to approve the Williamsville variance request as recommended by staff**; seconded by Commissioner Hegi and unanimously passed.

Budget Update

Scott Totten provided an update on the budget. General Revenue is only 7% of the Department of Natural Resources' overall budget. Approximately 10% of department positions are vacant due to turnover. The 2003 budget preparation is just beginning.

The Outreach and Technical Assistance Center has been elevated to department level. Sara Parker has been hired as the Director for the Outreach Center. Llona Weiss, formerly Assistant to the Director for commissions, will serve as Deputy Director of the Outreach Center. The Energy Center, Historic Preservation, Public Information, Technical Assistance Program, Special Events Coordinator, St. Louis Urban Outreach Office and the Web Master make up this division.

The Division of Environmental Quality has been split into two divisions. John Young is the director of the Air and Land Protection Division. Dan Schuette will serve as Deputy Director. Programs under this division are Air Pollution Control, Environmental Services, Hazardous Waste, Land Reclamation, and Solid Waste Management. Scott Totten will head up the Water Protection and Soil Conservation Division. Michael Warrick, formerly the department's deputy general counsel, will serve as Deputy Director. Public Drinking Water, Soil and Water Conservation and Water Pollution Control Programs and the six regional offices make up this division.

Commissioner Perry asked for hard copy information on the restructuring.

PSF/ContiGroup and Land Application of Hog Wastes

Ken Midkiff, Director of the Ozark Chapter of the Sierra Club, discussed the Operator Certification regulations previously adopted by the Clean Water Commission. At the time of the public hearing, neighbors objected to weakening the rules. One of the objections was that existing rules had not been enforced. Mr. Midkiff read some portions from Notices of Violation and a brief excerpt from an investigation report. Terra Renewal Services was the contractor on duty who caused the spill; Terra did not know they were to monitor the amount of waste being applied; Terra did not know the terms of the permit; Terra did not know the application rate; Terra said PSF would not come to the field when Terra began work; Terra said it received no training from PSF on land application. He indicated it is still not understood why the commission chose to weaken these regulations since concentrated animal feeding operations require assertive enforcement. Mr. Midkiff requested the commission appoint a new workgroup to review the operator certification regulations to make them protective of the environment.

Terry Spence stated he is encouraged by some of the comments made by the commission members today. He indicated he has been coming before the commission since 1995 and there are still concerns of a compounding problem and the operator certification rules should have been strengthened instead of weakened. Mr. Spence stated a well-balanced workgroup is needed to work out a strategy.

Robert Brundage stated Premium Standard Farms has had problems with the contractor that was hired to work for them; the land application problems were not brought about by employees of Premium Standard Farms. Premium Standard Farms staff do land application on ContiGroup operations also and operator error does not cause the majority of the problems. Mr. Brundage stated operator certification regulation changes have nothing to do with this. The area had 10-15

inches over normal rainfall by June this year. Premium Standard Farms spent many dollars to make sure their lagoons did not overflow. Mr. Brundage stated PSF hired six operators and one of those did a bad job and PSF did not supervise them adequately.

Mr. Midkiff discussed a certified CAFO waste management system operator needing to be on-site within 30 minutes after an incident.

Mr. Brundage noted PSF did have someone on-site within five minutes.

Other

Fee Bill Legislation

Robert Brundage reported there is a statutory deadline to promulgate regulations to shorten the time it takes to issue permits. He requested the commission and the department continue to look at this and streamline the permitting process.

Chairman Herrmann noted the commission suggested 180 days from when a completed application is received and many of the applications are not acceptable as received.

Commissioner Hegi asked if all the facilities that come up for permit renewal are inspected prior to renewal.

Phil Schroeder, Chief of the Permit Section, responded that staff is required by law to review these facilities but this does not always mean an on-site visit is done for each one. The Daily Monitoring Reports are reviewed to make sure the discharges being reported are not cause for concern.

Mr. Laux noted major facilities are inspected at least once per year as close to the renewal date as possible. Staff tries to inspect the smaller facilities the year that the permit is to expire.

There being no further business to come before the commission, Chairman Herrmann adjourned the meeting at approximately 3:50 p.m.

Respectfully submitted,

Scott B. Totten
Interim Director of Staff